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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 v.

10 DUANE EDWARD GRAY,

11 Defendant.

NO. 2:17-CR-0229-TOR-18

ORDER DENYING DEFENDANT'S
MOTION TO REDUCE SENTENCE

12
13 BEFORE THE COURT is Defendant's Motion to Reduce Sentence. ECF
14 No. 1168. The Government has submitted its opposition. ECF No. 1172. The
15 Court has reviewed the record and files herein, the completed briefing and is fully
16 informed.

17 **BACKGROUND**

18 On January 18, 2019, Duane Edward Gray appeared before the Court and
19 entered a plea of guilty to Count 44 of the Superseding Indictment filed on April
20 18, 2018, charging him with Possession with the Intent to Distribute 5 Grams or

1 More of Actual (Pure) Methamphetamine, in violation of 21 U.S.C. § 841. ECF
2 Nos. 754, 755. On May 21, 2019, this Court sentenced Defendant to, inter alia, a
3 48-month term of imprisonment, followed by a 5-year term of supervised release.
4 ECF No. 926. Defendant was remanded to the custody of the U.S. Marshal for
5 service of his sentence. *Id.*

6 On April 21, 2020, Defendant made a request to the warden of FDC SeaTac
7 for compassionate release. The request was denied. ECF Nos. 1168-3, 1168-4.
8 The Government concedes Defendant has exhausted his administrative remedies.
9 ECF No. 1172 at 7.

10 On August 31, 2020, Defendant filed the instant motion seeking
11 compassionate release. ECF No. 1168. Defendant is now 64 years old and seeks a
12 sentence reduction to time served or alternatively, converting a portion of his
13 supervision to home detention. *Id.* at 14. He explains that he has numerous health
14 conditions including obesity, diabetes (both Type 1 and Type 2), and coronary
15 artery disease, which place him at an increased risk of severe illness or death from
16 COVID-19. *Id.* at 3. He explains that FDC SeaTac has active COVID-19 cases
17 and he is in harm's way. *Id.* Defendant has a projected release date of September
18 17, 2021, *id.* at 4, and may be eligible for home confinement in December 2020,
19 ECF No. 1172 at 16.

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DISCUSSION

A. Eligibility for Compassionate Release

Federal courts have the statutory authority to modify an imposed term of imprisonment for two reasons: compassionate release under 18 U.S.C. § 3582(c)(1) or based on a change in the sentencing guidelines under 18 U.S.C. § 3582(c)(2). Until recently, motions for compassionate release could only be brought to the Court by the Director of the Bureau of Prisons. 18 U.S.C. § 3582(c)(1)(A) (2002). However, after the December 2018 passage of the First Step Act, defendants may now bring their own motions for compassionate release after exhausting administrative remedies within the Bureau of Prisons or by waiting 30 days after receipt of their request by the warden of defendant's facility, whichever is earlier. 18 U.S.C. § 3582(c)(1)(A) (2018).

A defendant may be eligible for compassionate release: (1) if the Court finds "extraordinary or compelling reasons" to warrant a sentence reduction; or (2) if the defendant is at least 70 years old, has served at least 30 years in prison pursuant to a sentence imposed for the offense for which the defendant is currently imprisoned, and the defendant is determined not to pose a risk of danger to the community. 18 U.S.C. § 3582(c)(1)(A). Under either eligibility prong, the Court must also find that a sentence reduction is "consistent with applicable policy statements issued by the [United States] Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A). The

1 Sentencing Guidelines instruct that the Court should consider the sentencing
2 factors set forth in 18 U.S.C. § 3553 when deciding a motion for compassionate
3 release, and that the Court should not grant a sentence reduction if the defendant
4 poses a risk of danger to the community, as defined in the Bail Reform Act.
5 U.S.S.G. § 1B1.13.

6 The Sentencing Commission’s policy statement on sentence reduction
7 mirrors the language of the compassionate release statute, but it has not yet been
8 updated to reflect the procedural changes implemented by the First Step Act.
9 U.S.S.G. § 1B1.13. “While that particular policy statement has not yet been
10 updated to reflect that defendants (and not just the [Bureau of Prisons (“BOP”)])
11 may move for compassionate release, courts have universally turned to U.S.S.G.
12 § 1B1.13 to provide guidance on the ‘extraordinary and compelling reasons’ that
13 may warrant a sentence reduction.” *United States v. McGraw*, No. 2:02-cr-00018-
14 LJM-CMM, 2019 WL 2059488, at *2 (S.D. Ind. May 9, 2019) (gathering cases).
15 The sentence reduction policy statement outlines four categories of circumstances
16 that may constitute “extraordinary and compelling reasons” for a sentence
17 reduction: (1) the defendant suffers from a medical condition that is terminal or
18 substantially diminishes the defendant’s ability to provide self-care in a
19 correctional environment; (2) the defendant is at least 65 years old, is experiencing
20 a serious deterioration in health due to the aging process, and has served at least 10

1 years or 75% of his or her term of imprisonment; (3) family circumstances
2 involving the death or incapacitation of the caregiver of the defendant's minor
3 child or the incapacitation of the defendant's spouse or registered partner; or (4)
4 other reasons, other than or in combination with the other listed circumstances, that
5 are extraordinary and compelling. U.S.S.G. § 1B1.13, Application Note 1.
6 Because Defendant's motion does not qualify under the first three categories, it
7 will be analyzed under the catch-all provision, "other reasons" that are
8 "extraordinary and compelling."

9 **B. Exhaustion or Lapse of 30 days**

10 The Warden of FDC SeaTac denied Defendant's compassionate release
11 request by May 5, 2020. ECF Nos. 1168-31, 1168-4. The Government concedes
12 Defendant has exhausted his administrative remedies. ECF No. 1172 at 7.
13 Accordingly, the Court finds Defendant has exhausted his administrative remedies
14 and timely filed this motion.

15 **C. Extraordinary and Compelling Reasons**

16 Defendant contends that his medical condition presents an extraordinary and
17 compelling reason to justify a reduction in sentence. Defendant, age 64, argues
18 that his health conditions place him at an increased risk of severe illness or death.

19 One of Defendant's reasons for requesting release is that he is obese and
20 according to the CDC obesity increases the risk for severe illness from COVID-19.

1 The most recent medical record of Defendant's weight is from December of 2019
2 when he was counseled regarding his diet and exercise. No other records show
3 that his obesity presents an ongoing problem. The medical records also document
4 that his diabetes and coronary artery disease are regularly monitored, treated and
5 are stable. Defendant's medical records do not show a debilitating condition, but
6 rather show that Defendant's conditions are being adequately treated.

7 Whether Defendant is housed in prison or detained at home, the virus
8 continues to spread throughout society. Fears of infection do not warrant
9 immediate release. In this case, there are no extraordinary and compelling reasons
10 for a reduction in sentence.

11 **D. Factors under 18 U.S.C. § 3553(a)**

12 18 U.S.C. § 3582(c) and the Sentencing Guidelines instruct that the Court
13 should consider the sentencing factors set forth in 18 U.S.C. § 3553(a) when
14 deciding a motion for compassionate release.

15 At the time of the original sentencing, the Court fully considered those
16 factors and imposed a sentence that was sufficient but not greater than necessary to
17 comply with and fulfill the goals of sentencing. Once again, the Court has fully
18 considered these factors in light of the developments since sentencing. Of
19 particular note is that the criminal conduct here was not a one time event, but was a
20 long standing conspiracy distributing methamphetamine from September 2016 to

1 December 2017. Defendant was admittedly a methamphetamine addict and
2 distributor. Significantly, while Defendant was on pretrial release he was arrested
3 again for possession of methamphetamine and two counts of introduction of
4 contraband into a correctional facility. ECF No. 508. On May 21, 2018, his
5 release conditions were revoked and he was incarcerated pending trial. ECF No.
6 505.

7 The sentence the Court imposed was “sufficient, but not greater than
8 necessary,” to comply with the purposes of § 3553(a), including to reflect the
9 seriousness of the offense, to promote respect for the law, to provide just
10 punishment for the offense and to afford adequate deterrence to this criminal
11 conduct. The sentence imposed remains sufficient but not greater than necessary
12 to comply and fulfill the purposes of sentencing.

13 **E. Danger to any Person and the Community under 18 U.S.C. § 3142(g)**

14 Defendant contends that he poses no danger to the community. ECF No.
15 1173 at 5. While Defendant’s underlying crime is not categorized as a violent
16 crime, it is a serious drug trafficking offense that carries with it a rebuttable
17 presumption of detention and demonstrates the risk he presents to the safety of the
18 community. Moreover, Defendant’s addiction has not been treated, he has not
19 completed any drug treatment or rehabilitation. The Court finds Defendant
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1 continues to pose a risk to the community significantly because he has not received
2 or completed treatment.

3 **CONCLUSION**

4 Although Defendant's health condition is unfortunate, the Court declines to
5 exercise its discretion to reduce Defendant's sentence because "extraordinary and
6 compelling" reasons do not warrant such a reduction. Moreover, consultation of
7 the sentencing factors set forth in 18 U.S.C. § 3553 do not favor a sentencing
8 reduction in this case, including the risk of danger Defendant presents to the
9 community.

10 **ACCORDINGLY, IT IS HEREBY ORDERED:**

11 Defendant's Motion to Reduce Sentence, ECF No. 1168, is **DENIED**.

12 The District Court Executive is directed to enter this Order and furnish
13 copies to the parties.

14 **DATED** September 24, 2020.



Thomas O. Rice
THOMAS O. RICE
United States District Judge